

FILED BY FAX

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Shimoda Law Corp.
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff RITA ELSALAYMEH
individually and on behalf of similarly situated employees

ENDORSED FILED
February 14, 2022
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SUTTER
CLERK OF THE COURT
By: Brenda Johnson, Deputy

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SUTTER

RITA ELSALAYMEH, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

TRI-COUNTY RESPITE CARE SERVICE, a
California Corporation; JOY M. SCOTT, an
Individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. CVCS21-0000579

CLASS ACTION

**~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: February 14, 2022
Time: 9:00 a.m.
Dept.: 1
Judge: Hon. Perry Parker

Filed: April 7, 2021
FAC Filed: June 8, 2021
Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion") in the
3 above referenced case came before this Court, on February 14, 2022, at 9:00 a.m., in Department 1
4 before the Honorable Perry Parker, presiding. Named Plaintiff Rita Elsalaymeh ("Plaintiff") filed this
5 putative class action on April 7, 2021. The operative Complaint alleges that Defendants Tri-County
6 Respite Care Service, and Joy M. Scott, ("Defendants") violated California law by 1) failing to pay
7 overtime wages; 2) failing to pay minimum wages; 3) committing rest and meal period violations; 4)
8 committing wage statement violations; 5) waiting time penalties; 6) failing to reimburse expenses; and
9 7) engaging in unfair competition. Plaintiff has also alleged Defendants are liable for civil penalties
10 under the Private Attorneys General Act ("PAGA") based on these violations. Plaintiff sought
11 attorneys' fees and costs as part of this Action. Defendants denied all of Plaintiff's claims and denied
12 that this case was appropriate for class treatment. No class has been certified.

13 The parties have agreed to settle the class and PAGA claims. Defendants will provide
14 monetary consideration in exchange for a release of claims consistent with the terms of the proposed
15 settlement as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and
16 Release ("Agreement"). Any capitalized terms herein shall have the same meaning as set forth in the
17 Agreement. The Court, having received and considered Plaintiff's Motion for Preliminary Approval of
18 Class Action and PAGA Settlement, the declarations in support, the Agreement, the proposed Notice
19 of Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS
20 FOLLOWS:

21 **1. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
22 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

23 The Court finds that certification of the following class for settlement purposes only is
24 appropriate under the California Code of Civil Procedure and related case law:

25 All non-exempt employees who have or continue to work for Defendants
26 in California from April 7, 2017, to either (1) the Preliminary Approval
27 Date, or (2) November 29, 2021, whichever is earlier
28

1 The Court recognizes that the foregoing definition is for Class Member identification purposes
2 only and is not intended to capture the claims at issue or limit or alter the released claims under the
3 Agreement.

4 The Court finds that Class Members meet the ascertainability and numerosity requirements since
5 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
6 the definition and the number of Class Members would make joinder impractical. The commonality and
7 predominance requirements are met for settlement purposes since there are questions of law and fact
8 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
9 contentions that Defendants caused the violations outlined above by 1) failing to pay employees earned
10 overtime wages; 2) failing to pay all minimum wages owed due to Defendants' rounding policy and
11 required off the clock work; 3) failing to provide duty-free meal and rest periods and pay premiums in
12 lieu thereof; 4) failing to pay sufficient reimbursement for work-related cell phone use; 5) failing to
13 accurately itemize the hours and wages earned on paystubs issued to class members. The PAGA,
14 waiting time penalty, wage statement violation, and unfair competition claims also derive from these
15 violations. Additionally, Class Members seek the same remedies under state law. The typicality
16 requirement for settlement purposes is also satisfied since the claims of the Class Representative is
17 based on the same facts and legal theories as those applicable to the class members.

18 The Court also finds that preliminarily and conditionally certifying the settlement class is
19 required to avoid each Class Member from litigating similar claims individually. This settlement will
20 achieve economies of scale for Class Members with relatively small individual claims and conserve the
21 resources of the judicial system.

22 The Court finds that Plaintiff Rita Elsalaymeh and Plaintiff's counsel, Galen T. Shimoda
23 Justin P. Rodriguez, Jessica L. Hart of the Shimoda Law Corp., to be adequate representatives of the
24 settlement class. The Court appoints them as class representative and class counsel, respectively.

25 **2. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT**

26 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
27 A. The Court finds on a preliminary basis that the Agreement falls within the range of reasonableness of
28 a settlement, which could ultimately be given final approval by this Court. The Court also

acknowledges that Class Members may object to the settlement at a fairness hearing approved by this Court or opt-out of being bound by the preliminarily approved Agreement.

Because the Court finds the Parties' settlement to have been agreed upon only after an extensive investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court preliminarily approves the Agreement and all terms therein as if stated here in full, including the \$300,000 Gross Settlement Amount.

The Court orders that Plaintiff Rita Elsalaymeh will receive \$15,000 as a Class Representative Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro rata distribution formula for Plaintiff's time and effort on behalf of Class Members.

The Court orders and approves Simpluris, Inc. to act as the Claims Administrator in this case. The Claims Administrator will take its fees out of the Gross Settlement Amount, which are not to exceed \$7,500. Any difference between the actual cost of the Claims Administrator and the approved payment will be redistributed to Qualified Claimants on a pro-rata basis.

The Court finds that an award of fees under the common fund doctrine is appropriate in this case because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to negotiate on behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of thirty five percent (35%) of the Gross Settlement Amount, *i.e.* \$105,000, to be appropriate compensation for Class Counsel. The attorneys' fees request is within the range that has been approved by other Courts in similar cases and is reasonable in light of the circumstances of this case, the substantial and beneficial results obtained on behalf of Class Members, and the contingent nature of the recovery over the course of this case, which included potential loss at summary judgment, certification, and/or trial proceedings. Additionally, the Court orders that up to \$15,000 of the settlement proceeds will be paid to Class Counsel for reasonable costs incurred in this case. Any difference between the actual costs incurred and the \$15,000 shall be paid to the Qualified Claimants on a pro-rata basis.

1 The Court approves of the ten thousand dollars (\$10,000) PAGA Payment, which shall be paid
2 from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the
3 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
4 Workforce Development Agency (“LWDA”) and Twenty-Five percent (25%) will be paid to Aggrieved
5 Employees on a pro rata basis as described in the Agreement. The Court also finds that the Agreement
6 provides a recovery that creates an effective substantial deterrent to any potential future non-compliance,
7 furthering the purpose of the Labor Code and LWDA.

8 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
9 Qualified Claimants and/or Aggrieved Employees that are not cashed by the deadline to do so shall be
10 paid out 50/50 to Capital Pro Bono, Inc., and the Center for Workers Rights.

11 The releases and waivers for Class Members who do not opt out of being bound by the
12 Agreement (*i.e.* Qualified Claimants), Aggrieved Employees, and the Class Representative are also
13 approved by the Court as set forth in the Agreement.

14 **3. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF SETTLEMENT,**
15 **OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE SETTLEMENT**

16 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiff’s
17 Motion as Exhibit F, fairly and adequately advises Class Members of the terms of the Agreement, the
18 rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during
19 the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement,
20 how to file documentation in opposition to the proposed settlement, and when to appear at the fairness
21 hearing to be conducted on the date set forth below. The Court further finds that the Notice of
22 Settlement and proposed distribution of such notice by first class mail to each identified Class Member
23 at his or her most recent address based on a National Change of Address database search from the Class
24 Members’ last known address and a skip trace on any Class Members who have the Notice of Settlement
25 returned as “undeliverable” or “not at this address” comports with all constitutional requirements,
26 including those of due process.

27 The Court also finds that because there is a strong interest in providing Class Members the
28 opportunity to participate in the settlement, along with the Parties’ efforts to minimize any intrusion to

1 privacy rights, the sharing of employment information, including social security numbers, is not a
2 serious intrusion on their privacy rights. Hence, the Court orders Defendants to provide first and last
3 name, last known mailing address, social security number, hire and termination dates, total number of
4 workweeks during which the Class Member performed any actual work to the Claims Administrator
5 only, and not to Plaintiff or Class Counsel, in order to process this settlement as contemplated within the
6 Agreement and approved by this Order. The Claims Administrator shall only use this information for
7 settlement purposes identified herein, and this information shall be kept confidential, not be shared with
8 any third-party, and used only to administer the settlement.

9 **4. IMPLEMENTATION SCHEDULE**

10 Accordingly, with good cause shown, the Court hereby approves and orders that the following
11 implementation schedule be adhered to:

12 Last day for Defendants to provide Claims Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date
13 Last day for Claims Administrator to complete NCOA search, update Class Member mailing information, and mail Notice of Settlement	Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendants
14 Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
15 Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 21 calendar days after end of the Notice Period
16 Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants' Counsel	Within 7 calendar days after the Final Approval Date

Last day for Defendants to fund settlement	Within 21 calendar days after the Final Approval Date
Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment to the LWDA, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 14 calendar days after Defendants' last day to fund the settlement
Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 calendar days after issuance of checks to Qualified Members and Aggrieved Employees
Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

FINAL APPROVAL AND HEARING & Order

The Court hereby grants Plaintiff's Motion and sets final approval hearing on the proposed date of June 13, 2022, at 9:00 a.m., with briefs and supporting documentation to be submitted according to the California Code of Civil Procedure, in this Department. Class Members who object in a timely manner, and in the manner set forth in the Agreement, may appear and present such objections at the fairness hearing in person or by counsel.

If for any reason the Court does not grant final approval of the Agreement, all evidence and proceedings held in connection therewith shall be without prejudice to the status quo and rights of the parties to the litigation, including all challenges to personal jurisdiction and to class certification for any purpose other than approving a settlement class. The parties will revert to their respective positions as if no settlement had been reached at all.

IT IS SO ORDERED.

Date: 02/14/2022

By: PERRY PARKER
Judge of the Superior Court